

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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PLR-100167-20

Date:

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Legend

Parent =

Acquiring =

Subsidiary 1 =

LLC 1 =

Distributing 1 =

Distributing 2 =

State A =

State B =

State C =

Business 1 =

Business 2 =

Business 3 =

Business 2 Assets =

Regulatory Authority 1 =

Regulatory Authority 2 =

Organization 1 =

Year 1 =

Year 6 =

Year 7 =

Month 1 =

Month 2 =

Dear :

This letter responds to your authorized representative's letter dated December 9, 2019, as supplemented by subsequent information and documentation, requesting rulings on certain federal income tax consequences of a series of proposed transactions described herein (the "Proposed Transactions"). The material information submitted in that letter and in subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding one or more “Covered Transactions” under sections 355 and 368 of the Internal Revenue Code (the “Code”) and pursuant to section 6.03(2) of Rev. Proc. 2020-1, 2020-01 I.R.B. 1, regarding one or more significant issues under section 355 of the Code that only address one or more discrete legal issues involved in the transaction. The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

This Office has made no determination regarding whether each of Distribution 1 and Distribution 2 (defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation, or any predecessor or successor of the distributing corporation or the controlled corporation, within the meaning of Treas. Reg. § 1.355-8 (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Parent is a publicly-traded State A corporation that is the common parent of an affiliated group of corporations that join in the filing of a consolidated U.S. federal income tax return (the “Parent Group”). Parent wholly owns Subsidiary 1, a State A corporation; Acquiring, a State B corporation; and Distributing 2, a State C limited liability company that has elected to be treated as a corporation for U.S. federal income tax purposes. Distributing 2 owns all the interests of LLC 1, a State C limited liability company that is disregarded from Distributing 2 for U.S. federal income tax purposes. LLC 1 owns all of the stock of Distributing 1, a State B corporation.

Distributing 1 is engaged in Business 1 and Business 2 in State B. Distributing 1’s Business 1 and Business 2 operations are conducted by employees of Acquiring and Subsidiary 1 pursuant to intercompany service agreements. Distributing 1 is regulated by Regulatory Authority 1, which approves the rates that Distributing 1 is able to charge for the service it provides through Business 1. Distributing 1 is a member of Organization 1, a not for profit corporation established under the authority of, and subject to regulation by, Regulatory Authority 1. Organization 1 independently administers the operation of the Business 1 assets of its members and serves as their agent for billing and collection. Organization 1’s members are required to comply with Organization 1’s operating rules, which among other things, define the types of

Business 1 assets that its members are able to include in their rate base for purposes of setting rates charged to users of the Business 1 assets operated by Organization 1. Organization 1's operating rules provide that Business 2 Assets may not be properly included in the rate base of a Business 1 business. As a result, the Parent Group is currently unable to earn a return on its investment in the Business 2 Assets.

In order to comply with Organization 1 rules, Parent (through the Organization 1 billing and collection process) has implemented the following remedies: (i) Year 6 revenue collected with respect to the Business 2 Assets by Distributing was credited to customers in their Month 1 Year 6 Organization 1 billings, (ii) revenue collected with respect to the Business 2 Assets by Distributing for Year 1 to Year 7, excluding Year 6, is expected to be credited to customers ((i) and (ii), collectively, the "Credited Revenue"), and (iii) revenue collected with respect to the Business 2 Assets by Distributing ceased in Month 2, Year 7 and will continue until the date of the Proposed Transaction (the "Uncollected Revenue").

Financial information has been submitted indicating that Business 1 has had gross receipts and operating expense representing the active conduct of a trade or business for each of the past five years. Financial information has been submitted indicating that Business 2 had gross receipts representing the active conduct of a trade or business prior to Month 2, Year 7 (although this has or will become the Credited Revenue) and operating expense representing the active conduct of a trade or business for each of the past five years.

Acquiring is engaged in Business 3 in State B. Acquiring is regulated by Regulatory Authority 1 and Regulatory Authority 2. Under the rules of Regulatory Authority 2, Acquiring may recover the cost of Business 2 Assets through the rates charged to customers of its Business 3 business. Therefore, Parent desires to cause the transfer of the Business 2 Assets from Distributing 1 to Acquiring in order to allow the Parent Group to earn a return on its investment in the Business 2 Assets.

Proposed Transaction

For what are represented to be valid business purposes, the Parent Group proposes to engage in the following transaction (the "Proposed Transaction"):

1. Distributing 1 will contribute the Business 2 Assets to Controlled in exchange for all of the Controlled stock (the "Contribution");
2. Distributing 1 will distribute all of the stock of Controlled to LLC 1 (the "First Distribution");
3. LLC 1 will distribute all of the stock of Controlled to Distributing 2;

4. Distributing 2 will distribute all of the stock of Controlled to Parent (the “Second Distribution”); and
5. Pursuant to state law, Controlled will merge with and into Acquiring with Acquiring surviving (the “Merger”). Parent will not receive any additional shares of Acquiring in exchange for its Controlled stock.

Representations

With respect to the Contribution and First Distribution, Distributing 1 and Controlled have made all the representations in section 3 of the Appendix to Rev. Proc. 2017-52, except as set forth below.

Distributing 1 has made the following alternative representations:

Representations 3(a); 8(a); 15(a); 22(a); 31(a); 41(a).

Distributing 1 has not made the following representations, which do not apply to the Distribution:

Representations 7; 19; 20; 24; 25; 35; 42.

Distributing 1 has made the following modified representations:

Representation 10: With respect to the business relied on by Distributing 1 to meet the active trade or business requirement of section 355(b), there has been no substantial operational changes since the end of Distributing 1's most recent taxable year. With respect to the business relied on by Controlled to meet the active trade or business requirement of section 355(b), other than ceasing the collection of Uncollected Revenue and the crediting of the Credited Revenue (both as described above), there has been no substantial operational changes since the end of Controlled's most recent taxable year.

Representation 11: Following the First Distribution, Distributing 1 and Controlled (until immediately after the Merger, then Acquiring) will each continue, independently and with Acquiring and Subsidiary 1 employees, the active conduct of the business on which it relies to meet the active trade or business requirement of section 355(b).

Representation 33: Payments made in connection with all continuing transactions, if any, between Distributing 1 and Controlled after the First Distribution and prior to the Merger, and between Distributing 1 and Acquiring after the Merger will be at cost basis without markup or as otherwise required by the Regulatory Authority 1 or Regulatory Authority 2, as the case may be.

Distributing 1 has not made Representation 40.

Distributing 1 has made the following additional representation:

The incorrect inclusion of the Business 2 Assets in the rate base for Business 1 was inadvertent, and Parent identified the issue and brought it to the attention of Organization 1 and Regulatory Authority 1.

With respect to the Distribution 2, Distributing 2 and Controlled have made all the representations in section 3 of the Appendix to Rev. Proc. 2017-52, except as set forth below.

Distributing 2 has made the following alternative representations:

Representations 3(a); 8(a); 15(a); 22(a); 31(a); 41(a).

Distributing 2 has not made the following representations, which do not apply to Distribution 2:

Representations 7; 17-20; 24; 25; 35; 39; 42; 46.

Distributing 2 has made the following modified representations:

Representation 10: With respect to the business relied on by Distributing 2 to meet the active trade or business requirement of section 355(b), there has been no substantial operational changes since the end of Distributing 2's most recent taxable year. With respect to the business relied on by Controlled to meet the active trade or business requirement of section 355(b), other than ceasing the collection of Uncollected Revenue and the crediting of the Credited Revenue (both as described above), there has been no substantial operational changes since the end of Controlled's most recent taxable year.

Representation 11: Following Distribution 2, Distributing 2 and Controlled (until immediately after the Merger, then Acquiring) will each continue, independently and with Acquiring and Subsidiary 1 employees, the active conduct of the business on which it relies to meet the active trade or business requirement of section 355(b).

Representation 33: Payments made in connection with all continuing transactions, if any, between Distributing 2 and Controlled after Distribution 2 and prior to the Merger, and between Distributing 2 and Acquiring after the Merger will be at cost basis without markup or as otherwise required by the Regulatory Authority 1 or Regulatory Authority 2, as the case may be.

Distributing 2 has not made Representation 40.

Rulings

The Contribution and the First Distribution

- (1) The Contribution, together with the First Distribution will be a reorganization under section 368(a)(1)(D). Distributing 1 and Controlled each will be “a party to a reorganization” within the meaning of section 368(b).
- (2) No gain or loss will be recognized by Distributing 1 on the Contribution (section 361(a)).
- (3) No gain or loss will be recognized by Controlled on the Contribution (section 1032(a)).
- (4) The basis of each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing 1 immediately before the Contribution (section 362(b)).
- (5) The holding period of each asset received by Controlled in the Contribution will include the period during which Distributing 1 held that asset (section 1223(2)).
- (6) No gain or loss will be recognized by Distributing 1 on the First Distribution (section 361(c)(1)).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 on the First Distribution (section 355(a)(1)).
- (8) The holding period of the Controlled stock received by Distributing 2 in the First Distribution will include the holding period of the Distributing 1 stock with respect to which the First Distribution is made, provided the Distributing 1 stock is held as a capital asset on the date of the First Distribution (section 1223(1)).
- (9) Earnings and profits, if any, will be allocated between Distributing 1 and Controlled in accordance with section 312(h) and Treas. Reg. sections 1.312-10(a) and 1.1502-33(f)(2).

The Second Distribution

- (10) No gain or loss will be recognized by Distributing 2 on the Second Distribution (section 355(c)(1) and Rev. Rul. 62-138, 1962-2 C.B. 95).
- (11) No gain or loss will be recognized by (and no amount will be included in the income of) Parent on the Second Distribution (section 355(a)(1)).
- (12) The holding period of the Controlled stock received by Parent in the Second Distribution will include the holding period of the Distributing 2

stock with respect to which the Second Distribution is made, provided the Distributing 2 stock is held as a capital asset on the date of the Second Distribution (section 1223(1)).

- (13) Earnings and profits, if any, will be allocated between Distributing 2 and Controlled in accordance with section 312(h) and Treas. Reg. sections 1.312-10(a) and 1.1502-33(f)(2).

The Merger

- (14) The qualification of the Contribution and the First Distribution as a reorganization described in sections 368(a)(1)(D) and 355 and the Second Distribution as a distribution described in section 355 will not be affected by the Merger.

Caveats

No opinion is expressed or implied about the tax treatment of the Proposed Transaction under any other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this ruling letter must be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transactions described herein are completed. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching a statement to its federal income tax return that sets forth the date and control number of this ruling letter.

Sincerely,

Mark Weiss

Mark Weiss
Chief, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: